United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 18-1309**
	)	**Issued: April 16, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Albany, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 18, 2018 appellant filed a timely appeal from February 7 and June 5, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to his accepted November 16, 2017 employment incident.

FACTUAL HISTORY

On November 20, 2017 appellant, then a 36-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2017 he suffered stress-related

[1] 5 U.S.C. § 8101 *et seq.*

loss of circulation in his lower left extremity, which caused him to lose his coordination and balance, while in the performance of duty. He explained that he fell and sprained his left ankle and suffered a minor contusion on the back of his head. On the reverse side of the form, the employing establishment checked the box marked "no" in response to whether the employee was in the performance of duty at the time of the incident and added that his injury was "due to another medical condition outside facility control." Appellant stopped work on November 17, 2017 and returned on November 24, 2017.

In a November 16, 2017 triage note, Dr. Gene R. Pellerin, Board-certified in emergency medicine, noted that appellant had chief complaints of left ankle pain. He related that appellant indicated that he may have twisted his ankle when he fell. In a separate note, Dr. Pellerin explained that appellant was treated on an emergency basis only for near syncope (near fainting).

In a separate emergency room note also dated November 16, 2017, Dr. Pasquala Reyes, a Board-certified family practitioner, diagnosed near syncope and ankle paresthesia. She indicated that appellant presented with a syncopal episode during a meeting at work. Dr. Reyes related that appellant explained that he indicated that he was standing close to the wall, "felt a paresthesias of his left ankle, and went to reposition his leg and he rolled his ankle and fell up against wall." She advised that appellant noted that he fell mostly on his buttock and then slightly hit his head towards the back. Additionally, appellant indicated that he had a little bump on his head, but denied any significant headaches, dizziness, or blurred vision. Dr. Reyes also advised that appellant denied neck pain and indicated that he had mild discomfort in the left ankle. She noted that appellant was on chronic anti-depressant medication and had "increased stressors lately." In a November 16, 2017 discharge note, Dr. Reyes diagnosed an ankle sprain and provided care instructions.

In November 20, 2017 treatment notes, Dr. Pellerin noted that appellant presented for a near syncope event and left ankle sprain.

OWCP also received a November 20, 2017 disability slip from a nurse who placed appellant off work until he was cleared by his physician.

On November 22, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing treatment with Dr. Mariam Roth, a Board-certified internist. On that same day Dr. Roth indicated that appellant was seen for status post near syncope event and left ankle sprain. She checked the box marked "no" in response to whether appellant had a prior history or preexisting condition and checked the box marked "yes" in response to whether she believed the condition was caused or aggravated by the employment activity. Dr. Roth noted that appellant indicated that he was "standing at meeting for 30 min[utes] and suddenly leg locked up and he fell back."

In a November 22, 2017 return to work form, Dr. Roth diagnosed left ankle sprain and recommended a return to work on November 24, 2017.

In a January 4, 2018 development letter, OWCP explained that, while appellant's claim was filed as a traumatic injury, since he alleged that his condition was stress related, it had been converted to a claim for an occupational disease. It explained that additional evidence was needed to establish his claim and requested that he submit additional medical and factual evidence and

complete a questionnaire describing in detail the employment-related conditions or incidents he believed contributed to his illness. A development letter of even date was sent to the employing establishment asking for factual information related to the claim along with investigation notes and a position description. It afforded both appellant and the employing establishment 30 days to submit the requested information.

In a January 10, 2018 statement in response to OWCP's request, appellant alleged that his supervisor was pressuring him and his coworkers on the date of the injury during remarks about his job performance. He also indicated his source of stress was a one-on-one meeting about his performance and that his fall was due to stress-related tightening of his body. Appellant denied having a history of fainting spells. He explained that his head hit the wall when he fell. Appellant explained that his leg gave out due to a loss of circulation from prolonged standing in an unnecessary meeting. Regarding outside stress, he noted only normal every day stress. Appellant also indicated that he had been treated for depression, anxiety, and bulimia for 18 years. Regarding a nonwork-related condition, he declined to discuss his condition other than to indicate that he was a disabled Veteran and cited privacy concerns.

The employing establishment did not respond to the development questions, but on January 10, 2018 it submitted a copy of appellant's position description.

By decision dated February 7, 2018, OWCP denied appellant's claim as he had not provided medical or factual evidence to substantiate that the alleged employment incident occurred as alleged, or that he sustained a medical or emotional condition causally related to the alleged incident while in the performance of duty.

In a February 16, 2018 letter, appellant indicated that he believed that OWCP's decision was in error because he did not have a preexisting condition. He explained that he fell due to a loss of circulation in his left leg, which was a result of stress due to comments made from his supervisor that were "accusatory and attacking in nature." Appellant explained that his fall occurred while in the performance of his job duties, as his department was in a department wide meeting at the time, discussing aspects of their job functions. He indicated that appropriate accommodations were not made and there was inadequate space and seating for all the employees. As a result, appellant was required to "huddle" in a cramped office where there was not enough space for everyone to be seated. He noted that this practice was recently changed after his fall. Appellant also indicated that he was submitting additional medical documentation and witness statements.

On February 27, 2018 appellant requested a review of the written record before an OWCP hearing representative.

In a January 16, 2018 statement, S.D., a coworker, confirmed that she was behind appellant during a "morning huddle" when they had to stand because all of the available seats were taken. She noted that, after standing for some time, "very sudden and with no warning" appellant started to lean to the left and hit the door to the left of him and went down, hitting his left knee on the floor. Another coworker, J.O., confirmed that she heard appellant fall during the meeting.

A November 16, 2017 magnetic resonance imaging (MRI) scan of the left knee, read by Dr. Terence Gibboney, a Board-certified diagnostic radiologist, revealed a partial tear of the anterior cruciate ligament.

By decision dated June 5, 2018, OWCP's hearing representative modified the prior decision to find that performance of duty had been established, but denied the claim as the evidence of record was insufficient to establish causal relationship. He explained that causal relationship was a medical issue and there was no medical evidence in the record which established a nexus between the event and the diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[2] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4] To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[5] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the accepted incident.[8]

To establish causal relationship between the claimed condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[6] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

medical opinion evidence supporting such causal relationship.[9] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted November 16, 2017 employment incident.

OWCP received emergency room treatment notes dated November 16 and 17, 2017 from Dr. Pellerin, who noted that appellant had complaints of left ankle pain and may have twisted his ankle when he fell. Dr. Pellerin indicated that appellant was treated on an emergency basis for a near syncope and fainting. In a November 20, 2017 treatment note, he diagnosed left ankle sprain. Likewise, in separate emergency room notes also dated November 16, 2017, Dr. Reyes diagnosed near syncope and ankle paresthesia. She indicated that appellant presented with a syncopal episode at a meeting at work and related that appellant indicated that he "felt a paresthesias of his left ankle and went to reposition his leg and he rolled his ankle and fell up against wall." She diagnosed an ankle sprain. While the physicians provided diagnoses, they did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] These reports, therefore, are insufficient to establish appellant's claim.

In a November 22, 2017 authorization for examination and/or treatment (Form CA-16), Dr. Roth noted that appellant was seen for near syncope event and left ankle sprain. She checked the box marked "yes" in response to whether she believed the condition was caused or aggravated by the employment activity. The Board has held that an opinion consisting of a checkmark notation supporting causation, without supporting medical rationale, is of limited probative value and insufficient to establish causal relationship.[14]

[9] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[10] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *J.R.*, Docket No. 18-1609 (issued March 7, 2019); *M.D.*, Docket No. 18-1267 (issued February 12, 2019).

OWCP also received a November 16, 2017 MRI scan report. However, diagnostic studies are of limited probative value as they do not address whether the employment incident caused the diagnosed conditions.[15]

The record contains a November 20, 2017 disability slip from a nurse. Under FECA, the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.[16] Consequently, the nurse's notes are not considered medical evidence and are of no probative medical value.[17]

As appellant has not submitted reasoned medical evidence explaining how a diagnosed medical condition is causally related to his accepted employment incident, he has not met his burden of proof.[18]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.[19]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted November 16, 2017 employment incident.

[15] *C.M.*, Docket No. 18-0146 (issued August 16, 2018); *see also J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] 5 U.S.C. § 8101(2). *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[17] *See E.M.*, Docket No. 18-1599 (issued March 7, 2019); *M.F.*, Docket No. 18-0330 (issued September 14, 2018).

[18] *See A.J.*, Docket No. 18-1116 (issued January 23, 2019); *E.C.*, Docket No. 17-0902 (issued March 9, 2018).

[19] The Board notes that it appears that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing treatment with Dr. Roth. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 5 and February 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board